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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

MARIO DIAZ,

Plaintiff,

v.

EXPERIAN INFORMATION SOLUTIONS,
INC.; and TRANS UNION LLC,

Defendants.

:
:
: Civil Action No.: 2:19-cv-00020-JCM-
: VCF

:
:
: **SECOND AMENDED COMPLAINT**
: **FOR DAMAGES¹**

:
:
: **JURY TRIAL DEMANDED**
:
:
:
:

¹ See ECF No. 46.

JURISDICTION AND VENUE

1. This Court has federal question jurisdiction because this case arises out of violation of federal law. 15 U.S.C. §1681 *et seq.*; 28 U.S.C. §1331; *Smith v. Community Lending, Inc.*, 773 F.Supp.2d 941, 946 (D. Nev. 2011). The Court has supplemental jurisdiction over Plaintiff's Nevada state law claims. *See* 28 U.S.C. § 1367.
2. This action arises from violations of the Fair Credit Reporting Act, 15 U.S.C. §§ 1681–1681x (“FCRA”), and the Nevada Revised Statutes, particularly NRS 598C.²
3. Venue is proper in the United States District Court for the District of Nevada pursuant to 28 U.S.C. § 1391(b) because Plaintiff is a resident of Clark County, the State of Nevada and because Defendants are subject to personal jurisdiction in the County of Clark, State of Nevada as they conduct business there. Venue is also proper because, the conduct giving rise to this action occurred in Nevada. 28 U.S.C. § 1391(b)(2). Further, Experian has a registered agent of service in Nevada and is listed with the Nevada Secretary of State as a foreign limited liability company doing business in Nevada.

PARTIES

4. Plaintiff Mario Diaz (“Plaintiff”) is a natural person residing in the County of Clark, State of Nevada. In addition, Plaintiff is a “consumer” as that term is defined by 15 U.S.C. § 1681a(c). Plaintiff is also a “consumer” as that term is defined by NRS 598C.040.
5. Defendant Experian Information Solutions, Inc. (“Experian”) regularly assembles and/or evaluates consumer credit information for the purpose of furnishing consumer reports to

² No controlling authority from the Ninth Circuit or the Nevada Supreme Court has interpreted NRS 598C as requiring an inaccuracy in order to prevail.

third parties, and uses interstate commerce to prepare and/or furnish the reports. Experian is a “consumer reporting agency” as that term is defined by 15 U.S.C. § 1681a(f) and a “Reporting Agency” as that term is defined by NRS 598C.100. Experian is doing business in Nevada, with a principal place of business in Ohio.

6. Defendant Trans Union LLC (“Trans Union”) regularly assembles and/or evaluates consumer credit information for the purpose of furnishing consumer reports to third parties, and uses interstate commerce to prepare and/or furnish the reports. Trans Union is doing business in Nevada.³

7. Unless otherwise indicated, the use of Defendant’s name in this Complaint includes all agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers of Defendant.

FACTUAL ALLEGATIONS – FCRA VIOLATIONS

General Allegations

8. The United States Congress has found the banking system is dependent upon fair and accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence, which is essential to the continued functioning of the banking system. Congress enacted the FCRA to insure fair and accurate reporting, promote efficiency in the banking system, and protect consumer privacy. The FCRA seeks to ensure consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the

³ On March 27, 2019, Plaintiff filed a notice of settlement with Trans Union. Because settlement has not yet been fully completed, Plaintiff names Trans Union in this amended complaint.

1 consumer's right to privacy because consumer reporting agencies have assumed such a
2 vital role in assembling and evaluating consumer credit and other information on
3 consumers.

4
5 9. The FCRA protects consumers through a tightly wound set of procedural protections from
6 the material risk of harms that otherwise flow from inaccurate reporting. Thus, through
7 the FCRA, Congress struck a balance between the credit industry's desire to base credit
8 decisions on accurate information, and consumers' substantive right to protection from
9 damage to reputation, shame, mortification, and the emotional distress that naturally
10 follows from inaccurate reporting of a consumer's fidelity to his or her financial
11 obligations.

12
13 10. In the Ninth Circuit, trial courts are required to construe the FCRA liberally in favor of
14 consumers.⁴

15
16 11. The FCRA entitles the consumer to take an active role in the protection of his or her
17 sensitive personal information, by giving the consumer a right to request "All information
18 in the consumer's file at the time of the request."⁵ "File," is explicitly defined in the FCRA,
19 and when applied to consumers, means, "all of the information on that consumer and
20 retained by a consumer reporting agency regardless of how the information is stored."⁶

21 The Ninth Circuit has defined "file" as all information the CRA maintains on a consumer
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26 ⁴ *Shaw v. Experian*, 891 F.3d 749, 755 (9th Cir. 2018) (citing *Guimond v. Trans Union Credit*
Info. Co., 45 F.3d 1329, 1333 (9th Cir. 1995).

27 ⁵ 15 U.S.C. § 1681g(a)(1). This requirement is subject to exceptions in Sections 1681h(a)(1)
and 1681g(a)(1)(A)-(B), which are not relevant here.

28 ⁶ *Id.* at § 1681a(g).

that has been, or might be, included in a consumer report on that consumer.⁷

12. The scope of a consumer report is broad.⁸ Section 1681a(d) defines a consumer report, in part, as a communication from a CRA bearing on a consumer’s “credit worthiness, credit standing, credit capacity, character, general reputation, or personal characteristics which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer’s eligibility for (A) credit or insurance to be used primarily for personal, family, or household purposes; (B) employment purposes; or (C) ***any other purpose authorized under section 1681b . . .***” Section 1681b(a)(2) provides that a consumer report is, *inter alia*, a document provided “in accordance with the written instructions of the consumer to whom it relates.” Similarly, Section 1681i(a)(6)(B)(ii) requires a CRA to provide a consumer with a “consumer report” following any reinvestigation of any item of information on the consumer’s file disputed by the consumer, so long as the CRA does not find the dispute frivolous.⁹ Experian has testified that a consumer can request that the results of reinvestigation be sent to a third party per a consumer’s request, and in response, Experian would send the entire reinvestigation – which could be a consumer’s complete file.¹⁰ Additionally, Experian has indicated that information appearing on a single tradeline can have multiple sources – not only from the furnisher of account information, but also a consumer, or a third party public records

⁷ *Shaw*, 891 F.3d at 759.

⁸ *See Reynolds v. Hartford Financial Services Group*, 435 F.3d 1081, 1094 (9th Cir. 2006), *rev’d on other grounds*, 551 U.S. 47 (2007).

⁹ *See* 15 U.S.C. § 1681i(a)(3).

¹⁰ *See Cardinali v. Experian*, No. 16-cv-2046-JAD-NJK, ECF No. 140, at ¶ 18 & n.75 (D. Nev. Feb. 19, 2019).

1 vendor.¹¹ Therefore, even when a furnisher accesses its “own” tradeline data from
 2 Experian, the information in question often contains more than just the furnisher’s own
 3 reported data.¹²

4
 5 13. Additionally, Section 1681j(a)(2) requires national consumer reporting agencies to make
 6 “all” Section 1681g disclosures to consumers for free during a 12-month period.¹³ Section
 7 1681j(a)(2) explicitly defines such free annual disclosures as a “consumer report.”¹⁴ Thus,
 8 Congress has already unambiguously defined a “consumer report” to be a document sent
 9 both to third parties and to the consumer himself.

10
 11 14. Section 1681j also requires that when a free annual credit report is properly requested, a
 12 national consumer reporting agency like Experian must make “all” of the disclosures
 13 required under Section 1681g.¹⁵ In fact, Experian’s annual credit request form does not
 14 differentiate between sections of Section 1681g.¹⁶ Requiring consumers to specifically
 15 request each discrete item of information under Section 1681g does not comport with the
 16 Ninth Circuit’s mandatory, consumer-oriented interpretation of the FCRA because it (1)
 17 requires consumers to know what is in their file *before* they receive it, (2) requires

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 22 ¹¹ See *Cardinali*, ECF No. 146-1, at ¶¶ 26-27 (noting that Experian’s internal documents showed
 23 that Experian had updated a particular tradeline with information from its public records vendor);
 24 *Nichols v. Credit Union 1*, No. 17-cv-2337-APG-GWF, ECF No. 96-6, at 206:15-212:7; 244:9-
 25 245:3; 246:19-247:6; 248:8-249:2 (D. Nev. June 5, 2019).

26 ¹² The sources of information on a particular tradeline are available in Experian’s internal
 27 records, but are obviously not available to Plaintiff – which is why Section 1681g imposes the
 28 affirmative obligation on consumer reporting agencies to disclose the source of this information.

¹³ 15 U.S.C. § 1681j

¹⁴ See *id.* at § 1681j(a)(2).

¹⁵ *Id.* at § 1681j(a)(1). See also *id.* at § 1681c-1 (requiring all disclosures to be made when a
 consumer suspects they may have become a victim of fraud).

¹⁶ See Annual Credit Request Form, as attached at ECF No. 36-5 (D. Nev. Apr. 9, 2019).

1 consumers to become both legal and credit experts with knowledge of the specific
 2 regulatory framework and how those regulations are applied discrete items of information
 3 in their files, and (3) would permit consumer reporting agencies to abscond from their
 4 responsibility to provide all disclosures to consumers for those consumers who did not
 5 know the nuances of statutory law.
 6

7 15. Therefore, every item of information on a consumer disclosure *might* be provided on a
 8 consumer report for purposes of Section 1681g, and triggers Experian's duty to ensure
 9 reasonable procedures to ensure maximum accuracy of the information related to the
 10 consumer on the consumer reports it prepares, in accordance with Section 1681e(b).¹⁷
 11

12 16. In fact, Experian's internal policies disclosed in discovery elsewhere show that Experian
 13 believes the results of reinvestigation must take the form of a consumer report,¹⁸ as well as
 14 suggest that Experian considers a consumer disclosure to be a consumer report:

15 It is Experian's policy that consumer reports may not contain any of the
 16 following information:

17

18 Inquiries related to credit or insurance transactions that are not initiated by
 19 the consumer (e.g. Prescreen), except on consumer file disclosures available
 20 only to and viewable by the consumer from Experian's My Customer
 Experience ("MCE");¹⁹

21 17. Pursuant to section 1681g, when a CRA discloses to a consumer that consumer's file, the
 22 disclosure must "clearly and accurately" reflect all the information in that consumer's file
 23

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 25
 26 ¹⁷ See *Shaw*, 891 F.3d at 759.

27 ¹⁸ See *Ashcraft v. Experian*, No. 16-cv-2978-JAD-NJK, ECF No. 130 at 10 & n.57 (citing
 Experian's Fair Credit Reporting Act Policy).

28 ¹⁹ *Leoni v. Experian*, No. 17-cv-1408-RFB-VCF, ECF No.115 at 3, 115-2 (D. Nev. Dec. 13,
 2018).

at the time of the disclosure. 15 U.S.C. § 1681g(a)(1). The Ninth Circuit evaluates the clarity and accuracy of a disclosure by recourse to how an average consumer would view them.²⁰

18. As discussed below, the Defendant CRAs failed to comply with their statutory obligations to provide Plaintiff all information in Plaintiff's consumer file thereby violating the above defined statutory obligations.

19. Similarly, the Nevada Revised Statutes, particularly NRS 598C, provide additional protections to consumers who seek to ensure the accuracy and privacy of the information reporting agencies store about them.

20. A "materially misleading" statement is concerned with omissions to credit entries, that in context create misperceptions about otherwise may be factually accurate data. *Gorman v. Wolpoff & Abramson, LLP*, 584 F.3d 1147, 1163 (9th Cir. 2009).

21. Reporting and rereporting patently incorrect and/or misleading statements also violates 15 U.S.C. § 1681g(a) because the lack of clarity in the information reported and rereported has the tendency to confuse ordinary consumers like Plaintiff.

EXPERIAN FCRA VIOLATIONS

Experian's Reports Violated the FCRA and NRS 598C.

22. On September 12, 2017, Experian provided Plaintiff with a Section 1681g consumer disclosure, Report No. 2726-9359-03 ("First Experian Report"). On June 21, 2018,

²⁰ See *Shaw*, 891 F.3d at 759-60.

Experian provided a second Section 1681g disclosure, which also served as a Section 1681j consumer report, Report No. 3152-8885-77 (“Second Experian Report”).

23. These reports were properly requested, and Experian was obligated to provide all of its Section 1681g disclosures, without limitation, in connection with at least the First Experian Report, as Section 1681j required Experian to make “all” of the disclosures pursuant to Section 1681g without limitation.

24. The First and Second Experian Reports contained multiple violations of Section 1681g and NRS 598C.

25. Pursuant to section 1681g, when a CRA discloses to a consumer that consumer’s file, the disclosure must “clearly and accurately” reflect all the information in that consumer’s file at the time of the disclosure. 15 U.S.C. § 1681g(a)(1). The Ninth Circuit evaluates the clarity and accuracy of a disclosure by recourse to how an average consumer would view them.

26. The First Experian Report was neither “clear” nor “accurate” with respect to several items of information, as it contained misstatements and omissions which made it misleading and confusing to an ordinary consumer like Plaintiff.

Experian Violated Section 1681g(a)(1) with Respect to Information Regarding Soft Inquiries.

27. Experian failed to provide Plaintiff with all of the information in its “file” in connection with its explanation of inquiries. The First and Second Experian Reports contained a list of inquiries shared both with others (“Hard Inquiries”) and those purportedly only shared with the Plaintiff (“Soft Inquiries”).

1 28. To explain its Soft Inquiries, Experian explained, “we offer credit information about you
2 to those with a permissible purpose.” However, Experian did not explain the reason why
3 each particular Soft Inquiry had been made.

4
5 29. On information and belief, Experian stores a copy of the permissible purpose any
6 subscriber may have for making an inquiry in its files, and can track the purpose types any
7 third party may have to make an inquiry into a consumer’s file. In fact, Clarity Services, a
8 credit reporting service which advertises itself as “a part of Experian,”²¹ provides the
9 purposes for why credit was pulled.²²

10
11 30. Thus, information about when any soft inquiry was made could and should have been
12 disclosed to Plaintiff in plain-English on him disclosure pursuant to Section 1681g(a)(1).
13 Moreover, as noted above, all information on a consumer disclosure *might* be sent to a third
14 party in a consumer report per the consumer’s request.²³ However, Experian did not
15 provide all of the permissible purposes it had stored.

16
17 31. This failure to disclose a plain-English description of each soft inquiry in Experian’s file
18 was confusing to an ordinary consumer like Plaintiff, who would have to guess as to why
19 any consumer report had been furnished. And, since information on a consumer disclosure
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24 ²¹ See Clarity Services, Inc., homepage, available at <https://www.clarityservices.com/> (last
visited July 21, 2019).

25 ²² See Clarity Services, Inc., *How to Read Your Clarity Report*, at 2, available at
26 [https://www.clarityservices.com/wp-content/uploads/2018/11/How-to-Read-Your-Clarity-](https://www.clarityservices.com/wp-content/uploads/2018/11/How-to-Read-Your-Clarity-Report-1.2-110818.pdf)
27 [Report-1.2-110818.pdf](https://www.clarityservices.com/wp-content/uploads/2018/11/How-to-Read-Your-Clarity-Report-1.2-110818.pdf) (last visited July 21, 2019) (“Clarity Report”). See also 15 U.S.C. 1681x
(preventing a consumer reporting agency from “circumventing or evading treatment as a consumer
reporting agency” by means of, *inter alia*, corporate restructuring).

28 ²³ See *Cardinali*, ECF No. 140, at ¶ 18 & n.75; *Shaw*, 891 F.3d at 759.

1 *might* include the soft-inquiry information,²⁴ and since Congress unambiguously defined a
2 consumer disclosure to be a consumer report in Sections 1681i and 1681j, Experian was
3 required to disclose this information.

4
5 32. The confusion regarding Experian's disclosures did not stop with its omission of this
6 information. In addition, Experian misrepresented when it would permit third parties to
7 access credit. For example, Experian explained to Plaintiff in its Section 1681g disclosures
8 that "[w]e offer credit information about you to those with a permissible purpose," when
9 in fact on information and belief Experian makes such information available to consumers
10 for purposes which are impermissible in nature.²⁵

11
12 33. An example of Experian's misrepresentations occurs in connection with an Experian
13 consumer report called a "Bullseye." In this product, Experian provides credit information
14 not to consumers, but to third parties.²⁶ A Bullseye can contain information from a variety
15 of sources, including the consumer, a third-party furnisher, and even Experian itself.²⁷
16 Experian's in-house expert has stated elsewhere that a Bullseye is credit information.²⁸

17
18 34. Because a Bullseye represents Experian's providing of credit information to a third party,
19 the report does not meet the exception to a consumer report in Section 1681a(d)(i) as a
20 report "solely as to transactions or experiences between the consumer and the person
21

22
23
24 ²⁴ See *Cardinali*, ECF No. 140, at ¶ 18 & n.75.

25 ²⁵ See *Foskaris v. Experian*, No. 17-cv-506-KJD-PAL, ECF No. 97 (D. Nev. Mar. 21, 2018).

26 ²⁶ See Experian Bullseye Product Sheet, available at
<https://www.experian.com/assets/access/brochures/Bullseye-product-sheet.pdf> (last visited July
21, 2019).

27 ²⁷ See *Cardinali v. Experian*, ECF Nos. 140, at ¶ 18 & n.75, 146-1, at ¶¶ 26-27; *Nichols*, ECF No.
ECF No. 96-6, at 206:15-212:7; 244:9-245:3; 246:19-247:6; 248:8-249:2.

28 ²⁸ See *id.* at ECF No. 97-35, at 223:22-224:2 (D. Nev. Mar. 21, 2018).

1 making the report.” This is because Experian is the “person making the report,” but the
2 “transaction” is between Experian and a third party, *not* the consumer. However, Experian
3 has stated elsewhere that it does not request, nor require, a permissible purpose to be
4 offered before a Bullseye is provided – even though the report is a “consumer report” which
5 does not meet a statutory exception under the FCRA.²⁹
6

- 7 35. Representing that Plaintiff’s credit information would be made available for permissible
8 purposes, while not reporting that his information might also be made available for
9 purposes not permissible under the FCRA, had the tendency to confuse an ordinary
10 consumer like Plaintiff, in violation of 15 U.S.C. § 1681g.
11

12 ***Experian Failed to Disclose Its “Behavioral” Data, in Violation of Section 1681g(a)(1).***

- 13 36. On information and belief, Experian amasses and maintains an enormous amount of
14 “behavioral” data on consumers, such as household income, purchase history, employment
15 history, education history, type of residence, and even whether an individual is a “dog” or
16 “cat” person. In particular, Experian has created a credit product known as “OmniView,”
17 which it represents is capable of localizing that data at the individual level, as well as
18 “ConsumerView,” ostensibly a marketing database. Experian describes ConsumerView as
19 “the world’s largest consumer database,” which contains “thousands of attributes on more
20 than 300 million consumers and 126 million households.” In fact, advertisements for
21 ConsumerView represent that the database contains notations on the *entire* United States
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27 ²⁹ See *Nichols v. Experian*, No. 17-cv-2337-APG-GWF, ECF No. 51-4, at 29-31 (D. Nev. Sept.
28 4, 2018).

credit population.³⁰ Experian has represented to the Ninth Circuit Court of Appeals that it maintains the ConsumerView database (formerly known as InSource) since 1998.³¹

37. Experian conceals the information from ConsumerView from Plaintiffs' knowledge. However, On December 19, 2017, an article from cybersecurity firm Upguard was published which described a data breach from Alteryx, which allegedly involved Experian data. According to the article, Alteryx had left unprotected hundreds of millions of records containing data acquired from Experian.³² Alteryx had apparently procured these records from Experian through an Experian product known as "ConsumerView," which it describes ConsumerView as "the world's largest consumer database," which contains "thousands of attributes on more than 300 million consumers and 126 million households."³³ The data available through ConsumerView includes, but is not limited to

³⁰ See Experian, *ConsumerView*, available at <https://www.experian.com/assets/dataset/brochures/consumerview.pdf>, at 5 (last visited July 21, 2019) ("ConsumerView Brochure").

³¹ See *Experian Information Solutions, Inc. v. Nationwide Marketing Services, Inc.*, No. 16-16987, Dkt. 30, at 3 (C.A.9 June 7, 2017). But see *Alexander v. Equifax Information Services, LLC*, No. 17-cv-139-APG-NJK, ECF No. 97, at 5, 6 (D. Nev. Jan. 10, 2018) ("the ConsumerView marketing database . . . [is] owned by non-party Experian Marketing Services," and that nothing in the FCRA requires Experian to "provide consumers with such information collected and stored by a separate affiliate such as non-party Experian Marketing Services.").

³² See Dan O'Sullivan, *Home Economics: How Life in 123 Million American Households Was Exposed Online*, Upguard, available at <https://www.upguard.com/breaches/cloud-leak-alteryx> (last visited July 21, 2019) ("Upguard Article"). Numerous media outlets have followed up on reporting of the breach, and at least one class-action complaint has been filed. See, e.g., Thomas Fox-Brewster, *120 Million American Households Exposed in "Massive ConsumerView Database Leak"*, Forbes, available at: <https://www.forbes.com/sites/thomasbrewster/2017/12/19/120m-american-households-exposed-in-massive-consumerview-database-leak/#384c64f17961> (last visited Dec. 19, 2017); Ryan Grenoble, *Experian Data Breach Exposes Information On 123 Million American Households*, Huffington Post, Dec. 19, 2017, available at https://www.huffingtonpost.com/entry/alteryx-data-breach-123-million-households_us_5a39316ae4b0860bf4ab4e24 (last visited Dec. 19, 2017). *Carson v. Experian*, No. 17-cv-2232-JVS-KES, ECF No. 1, at ¶¶ 31-34 (C.D. Cal. Dec. 21, 2017) ("*Carson*").

³³ See generally Upguard Article.

consumer (1) age, (2) gender, (3) marital status, (4) presence of children, (5) family status and position, (6) location, (7) homeowner status, (8) education, and (9) occupation.³⁴

According to news sources, the breached records contained information on “more than 300 million consumers and 126 million households.”³⁵ The breached Alteryx records, which were contained a single spreadsheet, contained 248 discrete data fields:³⁶

HH_ZeroBasedRecordID	ADDRESS ID	FIPS STATE CODE
STATE ABBREVIATION	FIPS ZIP CODE	ZIP+4
DELIVERY POINT CODE	CARRIER ROUTE	SHORT CITY NAME
CITY NAME	HOUSE NUMBER	PRE DIRECTION
STREET NAME	STREET SUFFIX	POST DIRECTION
UNIT DESIGNATOR	UNIT DESIGNATOR NUMBER	PRIMARY ADDRESS
SECONDARY ADDRESS	ADDRESS QUALITY INDICATOR	FIPS COUNTY CODE
COUNTY NAME	LATITUDE	LONGITUDE
MATCH LEVEL FOR GEO DATA	TIME ZONE	LIVING UNIT ID
PHONE: SPECIAL USAGE PHONE	PHONE: NUMBER 2	DWELLING UNIT SIZE
DWELLING TYPE	HOMEOWNER: PROBABILITY MODEL	HOMEOWNER: COMBINED HOMEOWNER-RENTER

³⁴ See *id.*

³⁵ See generally Upgaard Article.

³⁶ See *id.* at 3-7 (formatting altered).

EST HOUSEHOLD INCOME V5	INCOME MODEL:ESTIMATED HH CODE V4	INCOME MODEL:ENHANCED EST HH CODE (SCS) V4
NCOA MOVE UPDATE CODE	NCOA MOVE UPDATE DATE	RECIPIENT RELIABILITY CODE
MAIL RESPONDER	HOME BUSINESS	LENGTH OF RESIDENCE
NUMBER OF PERSONS IN LIVING UNIT	NUMBER OF ADULTS IN LIVING UNIT	RURAL URBAN COUNTY SIZE CODE
ACTIVITY DATE	NUMBER OF CHILDREN IN LIVING UNIT	MOR BANK: UPSCALE MERCHANDISE BUYER
MOR BANK: MALE MERCHANDISE BUYER	MOR BANK: FEMALE MERCHANDISE BUYER	MOR BANK: CRAFTS- HOBBY MERCHANDISE BUYER
MOR BANK: GARDENING- FARMING BUYER	MOR BANK: BOOK BUYER	MOR BANK: COLLECT- SPECIAL FOODS BUYER
MOR BANK: GIFTS AND GADGETS BUYER	MOR BANK: GENERAL MERCHANDISE BUYER	MOR BANK: FAMILY AND GENERAL MAGAZINE
MOR BANK: FEMALE ORIENTED MAGAZINE	MOR BANK: MALE SPORTS MAGAZINE	MOR BANK: RELIGIOUS MAGAZINE
MOR BANK: GARDENING- FARMING MAGAZINE	MOR BANK: CULINARY INTERESTS MAGAZINE	MOR BANK: HEALTH AND FITNESS MAGAZINE
MOR BANK: DO-IT- YOURSELFERS	MOR BANK: NEWS AND FINANCIAL	MOR BANK: PHOTOGRAPHY
MOR BANK: OPPORTUNITY SEEKERS AND CE	MOR BANK: RELIGIOUS CONTRIBUTOR	MOR BANK: POLITICAL CONTRIBUTOR
MOR BANK: HEALTH AND INSTITUTION CONTRIBUTOR	MOR BANK: GENERAL CONTRIBUTOR	MOR BANK: MISCELLANEOUS
MOR BANK: ODDS AND ENDS	MOR BANK: DEDUPED CATEGORY HIT COUNT	MOR BANK: NON- DEDUPED CATEGORY HIT COUNT

SECOND AMENDED COMPLAINT FOR DAMAGESJURY TRIAL DEMANDED - 15

MORTGAGE-HOME PURCHASE: HOME PURCHASE PRICE	MORTGAGE-HOME PURCHASE: HOME PURCHASE DATE	PROPERTY-REALTY: HOME YEAR BUILT
PROPERTY-REALTY: HOME LAND VALUE	PROPERTY-REALTY: PROPERTY INDICATOR	ESTIMATED CURRENT HOME VALUE
PROPERTY-REALTY: YEAR BUILT CONFIDENCE	PROPERTY-REALTY: YEAR BUILT	AUTO IN THE MARKET: NEW
AUTO IN THE MARKET: USED	AUTO IN THE MARKET: USED 0-5 VEHICLE	AUTO IN THE MARKET: USED 6-10 VEHICLE
AUTO IN THE MARKET: USED 11+ VEHICLE	BEHAVIORBANK: DONATES TO ENVIRONMENTAL CAUSES	BEHAVIORBANK: CONTRIBUTES TO CHARITIES
BEHAVIORBANK: PRESENCE OF CREDIT CARD	BEHAVIORBANK: PRESENCE OF PREMIUM CREDIT CARD	BEHAVIORBANK: INTEREST IN READING
BEHAVIORBANK: COMPUTERS-PERIPHERALS	MOSAIC HOUSEHOLD	MOSAIC ZIP4
MOSAIC GLOBAL HOUSEHOLD	MOSAIC GLOBAL ZIP4	HOUSEHOLD COMPOSITION
BEHAVIORBANK: INTEREST IN THE OUTDOORS	BEHAVIORBANK: INTEREST IN SPORTS	BEHAVIORBANK: INVESTORS
BEHAVIORBANK: PURCHASED THROUGH THE MAIL	BEHAVIORBANK: CRUISE ENTHUSIASTS	BEHAVIORBANK: INVESTS IN MUTUAL FUNDS- ANNUITIES
BEHAVIORBANK: PURCHASE VIA PHONE	BEHAVIORBANK: INTERNET-ONLINE SUBSCRIBER	BEHAVIORBANK: PURCHASE VIA ONLINE
BEHAVIORBANK: DOMESTIC TRAVELER	BEHAVIORBANK: FOREIGN TRAVELER	MORTGAGE-HOME PURCHASE: TYPE OF PURCHASE

MORTGAGE-HOME PURCHASE: MORTGAGE AMOUNT	MORTGAGE-HOME PURCHASE: MORTGAGE LENDER NAME V2	MORTGAGE-HOME PURCHASE: MORTGAGE RATE TYPE
MORTGAGE-HOME PURCHASE: MORTGAGE TERM (IN MONTHS)	MORTGAGE-HOME PURCHASE: MORTGAGE LOAN TYPE	MORTGAGE-HOME PURCHASE: DOWN PAYMENT %
MORTGAGE-HOME PURCHASE: DEED DATE OF EQUITY LOAN	MORTGAGE-HOME PURCHASE: EQUITY AMOUNT IN THOUSANDS	MORTGAGE-HOME PURCHASE: EQUITY LENDER NAME V2
MORTGAGE-HOME PURCHASE: EQUITY RATE TYPE	MORTGAGE-HOME PURCHASE: EQUITY TERM	MORTGAGE-HOME PURCHASE: EQUITY LOAN TYPE
MORTGAGE-HOME PURCHASE: REFINANCE DEED DATE	MORTGAGE-HOME PURCHASE: REFINANCE AMOUNT	MORTGAGE-HOME PURCHASE: REFINANCE LENDER NAME V2
MORTGAGE-HOME PURCHASE: REFINANCE RATE TYPE	MORTGAGE-HOME PURCHASE: REFINANCE TERM	MORTGAGE-HOME PURCHASE: REFINANCE LOAN TYPE
INVESTMENT PROPERTY: ZIP CODE	INVESTMENT PROPERTY: FIPS 2000 STATE CODE	INVESTMENT PROPERTY: PRIMARY (HOUSE) NUMBER
INVESTMENT PROPERTY: STREET PRE-DIRECTIONAL	INVESTMENT PROPERTY: STREET NAME	INVESTMENT PROPERTY: STREET SUFFIX
INVESTMENT PROPERTY: STREET POST- DIRECTIONAL	INVESTMENT PROPERTY: SECONDARY NUMBER (E.G. APT #)	INVESTMENT PROPERTY: SECONDARY UNIT DESIGNATOR
INVESTMENT PROPERTY: CITY NAME	INVESTMENT PROPERTY: TYPE OF INVESTMENT	INVESTMENT PROPERTY: DATE OF WARRANTY DEED
INVESTMENT PROPERTY: PURCHASE AMOUNT	INVESTMENT PROPERTY: TYPE OF PURCHASE	INVESTMENT PROPERTY: MORTGAGE AMOUNT
INVESTMENT PROPERTY: MORTGAGE LENDER NAME V2	INVESTMENT PROPERTY: MORTGAGE RATE TYPE	INVESTMENT PROPERTY: MORTGAGE TERM

INVESTMENT PROPERTY: MORTGAGE LOAN TYPE	INVESTMENT PROPERTY: DEED DATE OF EQUITY LOAN	INVESTMENT PROPERTY: EQUITY AMOUNT
INVESTMENT PROPERTY: EQUITY LENDER NAME V2	INVESTMENT PROPERTY: EQUITY RATE TYPE	INVESTMENT PROPERTY: EQUITY TERM
INVESTMENT PROPERTY: EQUITY LOAN TYPE	INVESTMENT PROPERTY: DEED DATE OF REFINANCE LOAN	INVESTMENT PROPERTY: REFINANCE AMOUNT IN THOUSANDS
INVESTMENT PROPERTY: REFINANCE LENDER NAME V2	INVESTMENT PROPERTY: REFINANCE RATE TYPE	INVESTMENT PROPERTY: REFINANCE TERM
INVESTMENT PROPERTY: REFINANCE LOAN TYPE	INVESTMENT PROPERTY: ADDITIONAL INVESTMENT FLAG	REALTY MODEL: EST CUR MORTGAGE AMOUNT CONFIDENCE CODE-V2
REALTY MODEL: EST CUR MORTGAGE AMOUNT- CODE V2	REALTY MODEL: EST CUR MORTGAGE AMOUNT- AMT V2	REALTY MODEL: EST CUR MONTHLY MORTGAGE PMT CONFIDENCE CODE- V2
REALTY MODEL: EST CUR MONTHLY MORTGAGE PMT-CD V2	REALTY MODEL: EST CUR MONTHLY MORTGAGE PMT-AMT V2	REALTY MODEL: EST CUR LOAN-TO-VALUE CONFIDENCE CODE-V2
REALTY MODEL: EST CUR LOAN-TO-VALUE RATIO-V2	REALTY MODEL: EST AVAILABLE EQUITY CONFIDENCE CODE-V2	REALTY MODEL: EST AVAILABLE EQUITY- CODE V2
REALTY MODEL: EST AVAILABLE EQUITY-AMT V2	CHILDREN: AGE 0-18 VERSION 3	CHILDREN: AGE 0-3 VERSION 3
CHILDREN: AGE 0-3 SCORE V3	CHILDREN: AGE 0-3 GENDER	CHILDREN: AGE 4-6 VERSION 3
CHILDREN: AGE 4-6 SCORE V3	CHILDREN: AGE 4-6 GENDER	CHILDREN: AGE 7-9 VERSION 3
CHILDREN: AGE 7-9 SCORE V3	CHILDREN: AGE 7-9 GENDER	CHILDREN: AGE 10-12 VERSION 3

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CHILDREN: AGE 10-12 SCORE V3	CHILDREN: AGE 10-12 GENDER	CHILDREN: AGE 13-15 VERSION 3
CHILDREN: AGE 13-15 SCORE V3	CHILDREN: AGE 13-15 GENDER	CHILDREN: AGE 16-18 VERSION 3
CHILDREN: AGE 16-18 SCORE V3	CHILDREN: AGE 16-18 GENDER	PHONE: ACTIVITY DATE
CENSUS 2010: TRACT AND BLOCK GROUP	CAPE: AGE: POP: MEDIAN AGE	CAPE: AGE: POP: % 0-17
CAPE: AGE: POP: % 18-99+	CAPE: AGE: POP: % 65-99+	CAPE: ETHNIC: POP: % WHITE ONLY
CAPE: ETHNIC: POP: % BLACK ONLY	CAPE: ETHNIC: POP: % ASIAN ONLY	CAPE: ETHNIC: POP: % HISPANIC
CAPE: DENSITY: PERSONS PER HH FOR POP IN HH	CAPE: HHSIZE: HH: AVERAGE HOUSEHOLD SIZE	CAPE: TYP: HH: % MARRIED COUPLE FAMILY
CAPE: CHILD: HH: % WITH PERSONS LT18	CAPE: CHILD: HH: % MARR COUPLE FAMW- PERSONS LT18	CAPE: CHILD: HH: % MARR COUPLE FAMW-O PERSONS LT18
CAPE: LANG: HH: % SPANISH SPEAKING	CAPE: EDUC: POP25+: MEDIAN EDUCATION ATTAINED	CAPE: HOMVAL: OOHU: MEDIAN HOME VALUE
CAPE: HISTR: HU: % MOBILE HOME	CAPE: BUILT: HU: MEDIAN HOUSING UNIT AGE	CAPE: TENANCY: OCCHU: % OWNER OCCUPIED
CAPE: TENANCY: OCCHU: % RENTER OCCUPIED	CAPE: EDUC: ISPSA	CAPE: EDUC: ISPSA DECILE
CAPE: INC: FAMILY INC STATE DECILE		CAPE: INC: HH: MEDIAN FAMILY HOUSEHOLD INCOME

38. Simple comparison of this list with Plaintiff's Experian Disclosures demonstrates that the disclosures did not contain a great deal of the information from ConsumerView. For

SECOND AMENDED COMPLAINT FOR DAMAGESJURY TRIAL DEMANDED - 19

example, and for illustrative purposes only, the Disclosures did not contain any notation about whether Plaintiff's household indicated the presence of children; education level; family income; as well as any of the numerous buying preferences. Experian's omissions stand in contrast to the fact that Clarity Services, which again is "part of Experian," provides data on check cashing details, net monthly income, and banking information.³⁷

39. Experian actively markets and sells data analytics products to third parties which use the Experian data from ConsumerView. Alteryx claims on its website, under the Experian trademark, that by "combining the data blending and advanced analytics of Alteryx with the demographic and behavioral data from Experian, you can append unprecedented insight about your customers and prospects, as well as monitor the changing dynamics of households over time."³⁸ Alteryx utilizes the "Experian ConsumerView household file," which contains "consumer demographics, life event, direct response, property, and mortgage information for more than 235 million consumers and 113 million households."³⁹ According to Alteryx, this data can be analyzed at the individual level, permitting companies to "analyze potential consumers based on marital status, gender, education, and occupation group."⁴⁰ Alteryx promises that, "Armed with current and five-year projections on lifestyle, attitude, brand preference, media use, and more, you can accurately predict customer demand today, tomorrow, and in the long term."⁴¹

³⁷ See Clarity Report, at 3-4.

³⁸ Alteryx, *Experian Marketing Services*, available at: <https://www.alteryx.com/partners/experian-marketing-services> (last visited Dec. 19, 2017).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

1 40. On information and belief, Experian has also created a credit product known as
2 “TrueTouch,” which it represents as having the ability to segment consumers into those
3 who are, *inter alia*, (1) tech-savvy, (2) price-cautious, (3) status-focused, (4) adventurous,
4 and (5) impulsive.⁴² Experian markets this data to third parties; it also appears to provide
5 this data for use in the ConsumerView database.⁴³ Given that ConsumerView is advertised
6 as having the “freshest” data on “more than 300 million individuals”⁴⁴ and contains
7 information on the *entire* United States credit population (including Plaintiff), on
8 information and belief the information in Experian’s TrueTouch database contained
9 information regarding Plaintiff.
10

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12 41. Information from these behavioral databases can be included on a consumer report. For
13 example, Experian sells a suite of services called “collection advantage.”⁴⁵ The
14 “Collection Advantage” services permit the user to combine data from Experian’s File One
15 database and a database known as “MetroNet.”⁴⁶ According to Experian, the MetroNet
16 “core” database contains “demographic information from INSOURCE[], the nation’s
17 largest repository of consumer marketing demographic data.”⁴⁷ On information and belief,
18 INSOURCE contains additional “behavioral” data, such as a “Living-unit structure,” which
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23 ⁴² See <https://www.experian.com/assets/marketing-services/product-sheets/true-touch.pdf>, at 1-
2 (last visited Feb. 18, 2018).

24 ⁴³ See ConsumerView Brochure, at 6.

25 ⁴⁴ See *id.* at 3.

26 ⁴⁵ Experian, Collection Advantage, available at
<http://www.experian.com/assets/consumer-information/product-sheets/2016/pscollection-advantage-121216.pdf> (last visited Aug. 30, 2018).

27 ⁴⁶ Experian, MetroNet, available at <https://www.experian.com/assets/consumerinformation/product-sheets/metronet.pdf> (last visited Aug. 30, 2018).

28 ⁴⁷ See *id.*

1 “recognizes family members independent of surname and can even identify roommates and
2 group settings.”⁴⁸

3 42. On information and belief, Experian has provided this “behavioral” data to third parties,
4 either directly or indirectly, who in turn sells the data to third party credit decision-makers.

5 43. However, not all of this highly personal, comprehensive, and invasive “behavioral” data
6 from Experian’s “ConsumerView” Database appeared on Plaintiff’s First Experian Report
7 or Experian Reinvestigation, giving Plaintiff no opportunity to meaningfully review this
8 data, or seek to correct any inaccuracies, as Section 1681g entitled him to do. Experian’s
9 failure to disclose all information it maintained regarding Plaintiff caused him to suffer a
10 concrete informational injury.
11

12 44. Behavioral data can clearly impact a consumer’s creditworthiness. A consumer receiving
13 a credit score also receives factors, or adverse action codes, that were particularly important
14 factors in the score, which “will relate to the information that was contained within the
15 consumer’s credit report when it was scored.”⁴⁹ A credit score is undisputedly a consumer
16 report.⁵⁰ Experian’s internal policies – which it has refused to produce in this case as of
17 the date of this filing – indicate that an item of information is deemed communicated on a
18 credit score if its omission impacts a credit score.⁵¹
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25 ⁴⁸ Experian, Insource, available at <http://www.experian.com/assets/marketing/services/product-sheets/insource.pdf> (last visited Aug. 30, 2018).

26 ⁴⁹ May 24, 2013 Rebuttal Report of Kimberly Hughes, *Toliver v. Experian*, *Toliver v. Experian*, No. 12-cv-2436, ECF No 42-8, at 9 (S.D. Tex. June 14, 2013) (“*Toliver* Expert Report”).

27 ⁵⁰ *See, e.g., Reynolds*, 435 F.3d at 1094.

28 ⁵¹ *See Cardinali v. Experian*, No. 16-cv-2046-JAD-NJK, ECF No. 140, at 13 & n.105 (D. Nev. Feb. 19, 2019) (citing Experian’s CIS Compliance Standards: FCRA Core).

45. Experian’s own list of “score factors” in its 2014 File One Appendix indicates the presence of numerous coded “Adverse Action Reasons[s]” which suggest that “behavioral” data can form the basis of a credit score.⁵² Among many examples, Experian add education,⁵³ length of job,⁵⁴ and the type of residence a consumer lives in,⁵⁵ can all be score factors. Experian also weighs the length of time since issuance of a social security number (an issue which disproportionately impact recently naturalized citizens).⁵⁶ In fact, Experian’s “emerging credit score” considers the presence of a “dispute” to be an adverse reason.⁵⁷
46. Experian’s failure to disclose this behavioral data to Plaintiff in its Section 1681g disclosures rendered these disclosures fundamentally incomplete, misleading, and confusing, and violated Plaintiff’s statutorily protected right to privacy.

Alternatively, Experian Violated Section 1681g(a)(3) and NRS 598C.

47. Alternatively, if contrary to Experian’s representations to the Ninth Circuit it did not in fact store its “behavioral” data itself, then it violated Section 1681g(a)(3) of the FCRA, which requires it to disclose the names of all persons who procured a consumer report for any purpose during the six-month period preceding the date of the request. There is no indication that any of the “soft” inquiries on Plaintiff’s First and Second Experian Reports corresponded with transmission of this “behavioral” data, even though Experian routinely

⁵² See generally Nov. 20, 2014 Experian File One Appendix, *Shaw v. Experian*, No. 16-56587, Dkt. 40-1, at 123-59 of 1185 (C.A.9 Sept. 1, 2017) (“2014 File One Appendix”).

⁵³ See, e.g., 2014 File One Appendix, at 140 of 1185.

⁵⁴ See, e.g., *id.* at 140.

⁵⁵ See, e.g., *id.*

⁵⁶ See *id.* at 139 of 1185.

⁵⁷ See *id.* at 129 of 1185.

1 advertises that its behavioral products are both comprehensive in scope and contain up-to-
2 date information.

3 48. Because Plaintiff's Section 1681g disclosures were properly requested, Experian was
4 obligated to provide *all* of the disclosures to him.⁵⁸ Plaintiff did not need to separately
5 request his Section 1681g(a)(1), 12681g(a)(2), 1681g(a)(3), 1681g(a)(4), 1681g(a)(5), or
6 1681g(a)(6) disclosures.

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8 49. Experian's failure to disclose the name of the entity which obtained this information would
9 also alternatively violate NRS 598C.130, which provides that Experian must disclose the
10 name of any third party to whom it had transferred information regarding him.

11
12 50. Experian's violations of Section 1681g(a)(3) and NRS 598C.130 totally deprived Plaintiff
13 of any ability to understand and appreciate the types of persons who had obtained him
14 private credit information.

15 ***Experian Failed to Adequately Disclose the Source of Its Names and Addresses, in Violation***
16 ***of Section 1681g(a)(2).***

17 51. Section 1681g(a)(2) requires a CRA to disclose the sources information in the CRA's file,
18 with certain exceptions not relevant here. Information about the sources of information
19 better enables the consumer to determine which furnisher is responsible for any inaccurate
20 or fraudulent reporting, and to follow up with that person directly if desired. Because
21 Plaintiff's Section 1681g disclosures were properly requested, Experian was obligated to
22 provide *all* of the disclosures to him.⁵⁹ Plaintiff did not need to separately request his
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27 ⁵⁸ See 15 U.S.C. 1681j(a)(1); 1681g.

28 ⁵⁹ See *id.* at §§ 1681j(a)(1); 1681g.

1 Section 1681g(a)(1), 12681g(a)(2), 1681g(a)(3), 1681g(a)(4), 1681g(a)(5), or 1681g(a)(6)
2 disclosures.

3 52. While the First Experian Report contained address information for Plaintiff, it did not
4 identify those sources in plain English. Instead, Experian identified the sources through
5 cryptic, numeric codes, which deprived Plaintiff of any ability to determine its accuracy.
6

7 53. Experian told Plaintiff that “we store address information as it is sent to us by your credit
8 grantors or from information contained in public records.” However, Experian did not
9 specify in plain English which specific source of information it had used to obtain the
10 address information Plaintiff had disputed except through their unrecognizable numeric
11 codes, thus frustrating Plaintiff’s ability to actually contact these sources to dispute the
12 information. For example, in the First Experian Report, Experian listed four separate
13 specific address codes, but only *one* of these codes – 0213485368 – was associated with a
14 particular furnisher, with the remaining codes completely absent from the document.
15

16 54. For Experian’s list of names, Experian provided no explanation of what source
17 corresponded to its “name identification number[s]” at all.
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19 55. Experian’s confusing disclosures confounded Plaintiff’s ability to actually follow up with
20 the sources of information to dispute inaccurate information. In so doing, Experian
21 violated Section 1681g(a)(2), which required Experian to disclose the “source” of
22 information for the disputed addresses in a manner which was not confusing to an average
23 consumer like Plaintiff.
24

25 56. Name and address information can impact a consumer’s creditworthiness. Experian’s own
26 list of score factor codes in its 2014 File One Appendix indicates that numerous credit
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28

scoring products include address information as potential “risk factors.”⁶⁰ Moreover, it is axiomatic that addresses can serve as a factor in determining risk premiums for insurance⁶¹ or eligibility for employment.⁶²

57. The statutory language of Section 1681g(a)(2) unequivocally requires disclosure of the source of information, which Experian must make to a consumer clearly and accurately. Experian knows that it must produce its disclosures in a manner which is understandable to consumers. In *Shaw v. Experian*, the Ninth Circuit adopted Experian’s argument that it did not have to disclose the “bits and bytes” of data in its internal systems.⁶³ Experian’s use of generic identification numbers confounds its own stated positions, as well as the Ninth Circuit’s controlling opinion in *Shaw*. Consequently, Experian violated Section 1681g(a)(2).

Experian’s Violations of Section 1681g(a)(1), 1681g(a)(2), and NRS 598C Were both Negligent and Willful.

58. Experian’s misrepresentations, omissions, and violations of Sections 1681g(a)(1), 1681g(a)(2), and alternatively Section 1681g(a)(3) and NRS 598C.130, had the tendency

⁶⁰ See, e.g., Nov. 20, 2014 Experian File One Appendix, *Shaw v. Experian*, No. 16-56587, Dkt. 40-1, at 129, 139-40, 142-43, 146 of 1185 (C.A.9 Sept. 1, 2017) (“2014 File One Appendix”); *Reynolds*, 435 F.3d at 1094 (noting that a response from a consumer reporting agency indicating that it did not have enough information to generate a credit score could qualify as a consumer report).

⁶¹ See, e.g., DMV.org, *Car Insurance Rates 101*, available at <https://www.dmv.org/insurance/auto-insurance-rates-101.php> (last visited Mar. 5, 2019).

⁶² See, e.g., U.S. Const. Art. II, Section 1, Clause 6 (noting that the President must be a natural-born citizen); see also City of Boston, *Residency Requirements for City Workers*, available at <https://www.boston.gov/departments/human-resources/residency-requirements-city-workers> (last visited Mar. 5, 2019) (“Anyone can apply to work for the City, but you must be a resident by your first day of work. The City passed an ordinance in 1994 that states all workers have to show proof of their residency each year.”).

⁶³ See *Shaw*, 891 F.3d at 758-60.

1 to confuse average consumers like Plaintiff. Experian's reporting of these fundamentally
2 inconsistent and confusing reporting was willful for the following reasons.

3 59. First, the plain language of Section 1681g(a)(1), 1681g(a)(2), and 1681g(a)(3) are explicit
4 – as Experian has argued itself elsewhere.⁶⁴ For Section 1681g(a)(1), the Ninth Circuit
5 has been no less explicit, clearly specifying in *Shaw* that all information that might be on a
6 “consumer report” must be disclosed in a clear and accurate manner. Congress has defined
7 a “consumer report” as Section 1681j and 1681i(a)(6)(B)(ii) disclosures. Since a consumer
8 must receive *all* Section 1681g disclosures upon request without limitation, and since
9 Experian's own disclosure forms do not provide for specific categories of Section 1681g
10 information to be requested, Experian was required to make all of these disclosures to
11 Plaintiff, but failed to do so. Its conduct constituted at least a reckless, and consequently
12 willful, violation of the FCRA.

13 60. Second, Experian has full control of the language and presentation of its Section 1681g
14 disclosures, and knows what credit information it provides to others. By failing to disclose
15 the sources of information in its file, or providing misleading information to consumers
16 regarding when their credit would be accessed and what third parties would have to
17 demonstrate in order to access the same, Experian willfully violated the FCRA.

18 61. Third, Experian knows the content of its disclosures, as well as the content it stores on
19 consumers. As explained above, Experian has represented to the Ninth Circuit that it
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⁶⁴ See *Foskaris*, ECF No. 39, at 4 (D. Nev. Nov. 22, 2017) (arguing, in connection with Sections 1681g(a)(1) and 1681g(a)(3) that “Section 1681g explicitly delineates the specific information that must be provided when Consumer Disclosures are required by the FCRA or requested by consumers.”) (emphasis added).

1 maintains the ConsumerView database, but does disclose the specific information that
2 database contains. Moreover, Clarity Services, an Experian company, discloses the
3 purposes for which credit was accessed, but Experian does not – even though Experian
4 plainly stores such information. Because Experian willfully withheld information from
5 Plaintiff which it was obligated to disclose, Experian willfully violated the FCRA.
6

7 62. Fourth, Experian knows which entities accessed the information in its files, and in fact is
8 under a Section 1681e(a) statutory obligation to ensure that consumer reports are only
9 accessed for permissible purposes. By failing to disclose these third parties, such as
10 Alteryx, Experian willfully violated the FCRA.
11

12 63. Accordingly, Plaintiff is eligible for statutory and punitive damages, as well as an award
13 of attorney's fees and costs. *See* 15 U.S.C. § 1681n; NRS 598C.190.
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15 64. Further, because all information in a consumer disclosure can also be information on a
16 consumer report as explained above, Experian's failure to disclose all of the information
17 to Plaintiff in a clear and accurate manner compromised its affirmative obligation to
18 implement reasonable procedures designed to ensure the maximum accuracy of the
19 consumer reports related to Plaintiff which it prepared, in violation of Section 1681e(b).
20 Maximum accuracy is best assured by providing all of the information to Plaintiff so that
21 he could review and, if found to be inaccurate, dispute the same. Experian's disclosure
22 failures meant that any information held in secret would be more likely to remain
23 inaccurate because Plaintiff would not have an opportunity to review and dispute it.
24

25 65. Even if Experian's conduct as described above did not constitute a reckless disregard of
26 the law, its conduct in all respects was negligent. Plaintiff has suffered actual damage to
27 his creditworthiness, because Experian's defective disclosures did not provide him with a
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1 reasonable opportunity to fix his credit reporting issues. Such damage includes but is not
 2 limited to a June 23, 2018, denial of a credit card from Chase, in which Plaintiff was
 3 informed that Experian had been the source of its reporting; it also includes diminishment
 4 of his credit scores based on Experian's own credit-scoring factors, as described above. In
 5 fact, a February 18, 2019 Experian credit report showed sixteen hard inquiries of his
 6 Experian file from February 20, 2017 through June 22, 2018.

8
 9 **FIRST CAUSE OF ACTION**
VIOLATION OF THE FAIR CREDIT REPORTING ACT
 10 **ALL DEFENDANTS**

11 66. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though
 12 fully stated herein.

13 67. The foregoing acts and omissions related to Defendants constitute numerous and multiple
 14 willful, reckless or negligent violations of the FCRA, including but not limited to each and
 15 every one of the above-cited provisions of the FCRA, 15 U.S.C. § 1681.

16 68. As a result of each and every willful violation of the FCRA, Plaintiff is entitled to actual
 17 damages as the Court may allow pursuant to 15 U.S.C. § 1681n(a)(1); statutory damages
 18 pursuant to 15 U.S.C. § 1681n(a)(1); punitive damages as the Court may allow pursuant to
 19 15 U.S.C. § 1681n(a)(2); and reasonable attorney's fees and costs pursuant to 15 U.S.C. §
 20 1681n(a)(3) from Defendants.

21 69. As a result of each and every negligent noncompliance of the FCRA, Plaintiff is entitled to
 22 actual damages as the Court may allow pursuant to 15 U.S.C. § 1681o(a)(1); and reasonable
 23 attorney's fees and costs pursuant to 15 U.S.C. § 1681o(a)(2) from Defendants.

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**SECOND CAUSE OF ACTION
VIOLATION OF NRS 598C
EXPERIAN ONLY**

70. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

71. The foregoing acts and omissions related to Experian constitute numerous and multiple negligent, willful, or reckless violations of NRS 598C, including but not limited to each and every one of the above-cited provisions of NRS 598C.

72. As a result of each and every willful violation of NRS 598C, Plaintiff is entitled to actual damages as the Court may allow pursuant to NRS 598C.190(1) and 598C.200(1); punitive damages as this Court may allow, pursuant to NRS 598C.190(2); and reasonable attorney's fees and costs pursuant to NRS 598C.190(3) and 598C.200(2).

PRAYER FOR RELIEF

Plaintiff respectfully requests the Court grant Plaintiff the following relief against Defendants:

**FIRST CAUSE OF ACTION
VIOLATION OF THE FAIR CREDIT REPORTING ACT
15 U.S.C. § 1681 ET SEQ. (FCRA)**

- an award of actual damages pursuant to 15 U.S.C. § 1681n(a)(1);
- an award of statutory damages pursuant to 15 U.S.C. § 1681n(a)(1);
- an award of punitive damages as the Court may allow pursuant to 15 U.S.C. § 1681n(a)(2);
- an award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. § 1681n(a)(3), and 15 U.S.C. § 1681(o)(a)(1) against Defendant for each incident of negligent noncompliance of the FCRA; and

- any other relief the Court may deem just and proper.

**SECOND CAUSE OF ACTION
VIOLATION OF NRS 598C
EXPERIAN ONLY**

- an award of actual damages pursuant to NRS 598C190(1) and 598C.200(1);
- an award of punitive damages pursuant to NRS 598C.190(2);
- an award of costs of litigation and reasonable attorney's fees, pursuant to NRS 598C.190(3) and 598C.200(2); and
- any other relief the Court may deem just and proper.

TRIAL BY JURY

Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: July 23, 2019

Respectfully submitted,

/s/ Miles N. Clark

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